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Coronation Day

On the day when her present Majesty, then Princess Elizabeth, completed her twenty-first year she dedicated herself to the people who in a very few years, far sooner than she could know, were to be her people. "I declare before you all," she said, in broadcasting to the nation, "that the whole of my life, whether it be long or short, shall be devoted to your service." The essential feature of her approaching coronation is the solemn reaffirmation of that young pledge in a context which is a visual and audible summary of the glories and the tragedies of the long story of Britain.

We speak of Coronation Day, for in the past our attention has been concentrated on the final symbolic glorification of the royal person, but that concentration is rather a habit inherited from a time when "the boast of heraldry, the pomp of power" came very near to making pride a virtue. The feelings and convictions of our own time could hardly be more different. Pride and glory no longer fire the popular imagination and if the British monarchy meant no more than that it would many years since have passed away with the discarded fashions of the past. Why it has not so passed away may be understood by those who see the day's ceremonies whole and clear and inter-related, for before the act of crowning comes the consecration to God in the Anointing, the sovereign's personal promise in the Oath and the expression of the people's choice and ratification in the Recognition, when Her Majesty stands before those assembled in Westminster Abbey, while the Archbishop of Canterbury says: "Sirs, I here present unto you Queen Elizabeth, your undoubted Queen: wherefore, all you who are come this day to do your homage and service: Are you willing to do the same?" Then, in the ancient ritual, the people signify their willingness and joy, all with one voice crying out, "God Save Queen Elizabeth." And the trumpets sound.

Thus, in that place and in those moments, not only times but worlds unite, for history reaches out to meet eternity, in the reaffirmation of belief in God and in a personal Providence behind things seen. Much of the symbolism in this day's pageantry is obvious and none the worse for that, since one must firmly appreciate the obvious before one can apprehend the subtle. The colourful glitter of the Household Troops and of the Yeomen of the Guard recall, in a way which even a child can appreciate, the battles long ago, the dangers overcome, through which our national integrity has been preserved, just as the Barons of the Cinque Ports and the seamen of the Navy alike declare that never-relaxed mastery of the watery element which has made even the cruel sea the friend and protector of our island. The robes of the peers, the state of the Lord Chancellor, of the Speaker of the House of Commons and of the representatives of the judiciary, tell in terms of colour and splendour and ceremonial the story of the development, the adaptation, of our law and constitution, a living growth linking the institutions which we know with the feudal origins from which they sprang.

But stretching beyond the origins of our institutions, beyond even the deepest roots of our national existence, lie the instincts which the symbolism of the ceremonies fulfils and satisfies, and we are carried back in imagination to the crowns with which the ancients adorned the statues of their gods and to an even more remote antiquity in which the prophets with horns of oil anointed the Kings of Israel.

This pageantry, these ceremonies, are not a mere theatrical entertainment, a passing show. They are a triumphant reassertion of human personality in the governor and the governed, an affirmation that man is more than just a chemical compound, a biological phenomenon, that just as the beauty which his craftsmanship creates reflects the immortal gifts which he has received from his Creator, so the authority of the ruler derives not from the accident of mere power or brute force but from that ruler's own submission to the discipline of a higher law.

When, in deep mourning for her father, Her Majesty made her Accession Declaration before the Privy Councillors assembled in St. James's Palace, she said: "My heart is too full for me to say more to you to-day than that I shall always work, as my father did throughout his reign, to uphold constitutional government and to advance the happiness and prosperity of my peoples, spread as they are all over the world . . . I pray that God will help me to discharge worthily this heavy task that has been laid upon me so early in my life."

And as the young Queen goes to her dedication against the splendid background of the ancient ceremonial, woven like a tapestry in which the threads are the memories of three thousand years, the mind echoes in hope the words in which Shakespeare foreshadowed the triumphs of the first Elizabeth:—

> "She shall be the happiness of England,
> An aged princess; many days shall see her
> And yet no day without a deed to crown it."

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CURRENT TOPICS

The Home Secretary on Crime

THE heartening estimate that about 80 per cent. of those sent to prison for the first time never go back there was one of the points made by Sir DAVID MAXWELL FYFE, Q.C., at the annual meeting of the Liverpool, South-West Lancashire and North Wales Prisoners' Aid Society on 18th May. He also said: "Of those who, since the late war, have served their first sentences in our regional and central prisons, where full and constructive training can be given, about 90 per cent. have not come back—and for women the figure is nearer 100 per cent. Even those who return to prison again and again are returning less often than they did before the war." With regard to preventive detention he said that at the present rate of progress there may soon be at least 1,000 men serving long sentences of preventive detention. He estimated that they were relieving society of some 10,000 man-years of criminal activity, including an allowance for the effect which the mere existence of this sentence is known to have in causing a number of old offenders to decide that the game is not worth the candle.

The Trustee Investment List

A SERIES of three articles under the above title in the *Financial Times* of 14th, 15th and 16th May, by Mr. F. W. SMITH, lucidly and thoroughly examined the "evergreen" question of extending the trustee list, and all its kindred questions and proposed solutions. The contraction of recent years in the trustee list has increased the number of cases in which trustees are given wide investment discretion. The problem put in the first article is that trustee investment does not lend itself to standardisation owing to the widely varying needs of *cestuis que trust*, and the trustees' difficulties are not lessened by the fact that, for example, 2½ per cent. Treasury stock, 1975 or after, which was issued at par at the end of 1946, now stands at 60! With regard to extending the list, it was sometimes felt that trustees' duties were sufficiently onerous already. The proposal that trust corporations should have wider powers than individuals he dismissed as unlikely to reach the Statute Book. With regard to the inclusion of equities in the list, he said that their inclusion would call for sound selection followed by careful supervision. He asked whether the question to-day was not "should equities be included, but rather, can they be left out?" He wrote that the stocks of the newer utilities like electricity and gas might well be included. After examining a number of suggestions he stated that there was no easy solution and suggested that the Government should appoint a committee to consider the whole question. He concluded by quoting from the report of the Nathan Committee that "ultimately the only true protection for the maintenance of the real value of the trust fund is the honesty and competence of the trustee."

Shares of No Par Value

IN a statement published on 18th May, the General Council of the Trades Union Congress expressed its strong opposition to changes in the Companies Act to permit the issue of shares of no par value. There is a possibility, it stated, that money received for such shares might be used for dividend payments instead of being credited to capital account. Such potential abuses could only be avoided by detailed safeguarding legislation, which in itself would go far towards defeating the objects of the change. It does not agree that no par value shares would be less likely than par value shares to mislead ordinary investors about the earning power of particular companies. It added that one of the main purposes of the issue of shares of no par value is to conceal what is happening inside public companies, and in particular to camouflage the

payment of excessive dividends. Its view is that if a company wishes to pay what appears to be an unusually high dividend the directors should be prepared to explain their reasons to their employees, not seek to conceal their actions by such devices as the manipulation of no par value shares.

Delegation of Powers to District Councils

THE Middlesex County Council has made a survey on the basis of which it has prepared a scheme for delegating to local district councils the maximum amount of power permitted under existing legislation, in particular under the planning laws, and for administering the county council's functions as local health authority. It proposes that the fifteen borough councils and eleven urban district councils should be formed into twenty area sub-committees of the county health committee. For administering the county council's functions as planning authority, the county district councils would be empowered (*a*) to serve notices and make orders for the enforcement of planning control or for tidying waste land, or any other purpose except where compensation may be payable, without prejudice to the concurrent powers of the county council and to its power to act in default of a county district council; (*b*) to refuse or grant, with or without conditions, permission in respect of all applications for planning permission or to display advertisements and to exercise the powers of the local planning authority in regard to proposals of statutory undertakers. The county planning committee would reserve to itself the decisions on major issues such as proposals contrary to development plan proposals or cases likely to give rise to compensation claims. The powers over advertisements in areas of special control would also be delegated except where compensation might be payable. Any increased expenditure incurred should be borne by the county district council concerned.

Main Road Maintenance

MR. E. C. BOYCE, County Surveyor of Gloucester, recalled, in *The Times* of 22nd May, a "priority resolution" passed on 13th March by the road safety conference of organisations convened by the Royal Society for the Prevention of Accidents "that more expenditure on road construction, maintenance, and improvement is vital to the interests of road safety." Referring to a recent report by the Commons' Select Committee on Estimates that the trunk and first-class roads were at least as good as they were before the war, he wrote that traffic intensity on trunk and first-class roads had increased out of all recognition since before the war, and in many cases the heavy commercial traffic had doubled; moreover, the accidents on these roads were going up by leaps and bounds. He gave an example of a narrow three-mile length of road in Gloucestershire where many accidents had occurred through vehicles overtaking, and although the Ministry had been implored to widen it, it had refused to allocate funds for the purpose. It was his view and that of many of his colleagues that road improvements of all kinds, and in particular the widening of carriageways of congested trunk and first-class roads, can make a greater contribution to road safety than any other measures. A letter much to the same effect appeared in *The Times* on the following day from Mr. DAVID WATSON, the Warwick County Surveyor. "I have no doubt," he wrote, "that similar conclusions apply to the rest of the country."

A Conveyancer's Diary

DISCRETIONARY TRUSTS

ONE of the results of the present extremely high rates of taxation has been to popularise the discretionary trust. Fifty years ago, if a man wanted to unburden himself of some of his wealth in favour of his family, he would very commonly execute a settlement of which the main provision was the creation of life interests in portions of the settled fund for each of his children, with remainders to their issue. Settlements on these lines can be, and frequently were, considerably elaborated, as, for example, by the superimposition of a power of appointing the fund among the children, the power being either reserved to the settlor or conferred upon his spouse, or both, but in the main practically all marriage settlements and many other settlements, whether testamentary or *inter vivos*, contained trusts for life for the settlor's children as a central feature. These life interests were sometimes subjected to protective trusts, and in that guise the discretionary trust is a well established provision; but the creation of discretionary trusts independently of protective provisions was most unusual until very recent times.

Now all that is altered, and for this reason. If a fund is settled upon *A* for life with remainder to his children, on *A's* death there is a passing of the fund for estate duty purposes, and owing to the rules concerning aggregation it is not necessary for either the fund or *A's* estate to be by themselves of any considerable size for estate duty to become payable on the aggregate of the two at a rate which is anything but inconsiderable. In this situation the discretionary trust can be of great assistance. If a fund instead of being settled on *A*, *B* and *C* in equal shares for their respective lives, with remainder as to each such share to their respective children, is settled upon trust that the trustees shall distribute the income during a specified period at their discretion between *A*, *B* and *C* and any children or other issue of *A*, *B* and *C* from time to time in existence, then on the death of any of the named beneficiaries *A*, *B* or *C* during that period no estate duty is payable in respect of that beneficiary's interest in the fund, because the interest, being subject to the trustees' discretion, is not capable of being valued. That is the primary advantage of the discretionary trust over the trust for life with remainders over.

True, the existence of the discretion puts it out of the settlor's power to provide for a distribution of the income of the fund which will in all circumstances be equal as between the primary class of beneficiaries (the settlor's children, in the ordinary case). That is one disadvantage. True, also, that the discretionary trust, in a scheme such as that outlined above, must come to an end at an arbitrary point of time, since the fund must vest in interest within the period allowed by the rule against perpetuities. That is another disadvantage. But neither of these disadvantages are, in practice, insuperable. The first is, perhaps, more apparent than real, since the trustees can properly exercise their discretion to divide the income of the fund as it arises (although not, to any considerable extent, in advance) between any members of the discretionary class to the exclusion of the rest, and this makes it possible, in the example given, for *A*, *B* and *C* to enjoy the income of the fund in equal shares during their lives (if the specified period so long lasts), and on the death,

say, of *A* for the share of income which he enjoyed during his lifetime to be paid to his children or issue. If various *stirpes* of the same family are at any one time beneficially entitled under a discretionary trust, the course which is ordinarily adopted by the trustees in exercising their discretion is to divide the benefit stirpitally. The other disadvantage can be overcome by a provision that the trustees be at liberty to terminate the specified period at their discretion before it comes to an end by effluxion of time, either once for all in regard to the entirety of the fund, or from time to time as regards parts of the fund. In the example I have given a power of the former kind would make it possible to terminate the period, and thus make the entire capital of the fund distributable, on the death of the survivor of the primary class *A*, *B* and *C*, and a power of the latter kind would make it possible to distribute one-third of the capital on the death of the first member of the primary class to die, and to distribute that one-third among his children or issue. In practice, therefore, the ultimate destinations of both the income and the capital of a fund held on discretionary trusts for a class of issue may conform very closely to their respective destinations under a trust for issue where the beneficiaries' interests are exhaustively defined, as is the case in trusts framed on the traditional lines of a marriage settlement, as such settlements were known to our parents' generation.

Like all schemes of settlement, discretionary trusts have their pitfalls which in the long run experience, and experience alone, can teach one to avoid; but this educational process can be assisted by the decided cases on the subject, to which *Re Gestetner Settlement* [1953] 2 W.L.R. 1033; *ante*, p. 332, is an important addition. The scheme of disposition adopted by the settlor in this case was most unusual in its arrangement, the trusts of income and capital being set out in a somewhat illogical order, but the general effect was as follows: a fund was transferred to trustees upon trust to pay or apply the income during a specified period for the maintenance or benefit of such member or members of a specified class as the trustees might from time to time determine, and subject to and in default of such determination the income was to be held in trust for the settlor's children or remoter issue *per stirpes*, with an ultimate trust for a charity in default of such children or issue. The specified class for this purpose was very large; it included the descendants of the settlor's father (under which description the settlor's own children and issue were, of course, entitled to benefit), a number of charitable institutions, and finally any person who might for the time being be a director or employee, or former director or employee, or the wife or husband or widow or widower of a former director or employee, of a named company or of any company of which the directors for the time being included any one or more of the persons who might for the time being be directors of the named company. The specified period was a period selected, as always in these cases, by reference to the rule against perpetuities, but the income trusts so declared did not necessarily have to endure until the end of this period because in this period, and *pari passu* with the income trusts, the trustees were directed to hold the capital of the trust fund for such member or members of the specified class as the trustees might, during the period, appoint, and subject as aforesaid the capital was directed to be held on trust for such of the settlor's children as might attain the age of twenty-one years, with a substitutional gift to the issue of children dying under that age and leaving issue.

By exercising the power to appoint capital, the trustees could thus bring the whole trust to an end before the expiration of the specified period, but if they did not do so, a class was defined to take the capital in default of appointment. The class to take the capital of the fund in default of appointment consisted of persons who were included, with others, in the specified class in favour of whom an appointment of capital could be made, but this was an immaterial circumstance. The trusts in respect of income were in this respect similar, the ultimate class being a class consisting of the settlor's children and issue, although this class was not necessarily the same class in all respects as the class of children and issue specified to take the capital in default of appointment; but this slight difference was also immaterial, being due solely to the different periods of time at or during which the two trusts were intended to operate.

The difficulty which arose in this case was the width of the specified class. It was admitted that it was impossible at any given moment of time to ascertain all the persons who might then comprise the class. Fastening on this circumstance, counsel for those interested in upsetting the settlement argued that, as the power of selection within the class, as regards both the income and the capital trusts, was a power coupled with a duty, the power was bad, because the trustees could only make a proper selection between the persons comprising the class if they had knowledge of the merits and demerits of every member of the class. This argument failed because Harman, J., held that the premise on which it was based was not justified by the facts; in his view, the trusts to appoint income and capital, respectively, between members of the specified class imposed no duty of selection on the trustees, since if no appointment was made persons existed who could, under the terms of the settlement, take the unappointed income or capital, as the case might be. On the other hand, it is clear from the learned judge's judgment and the authorities which he considered before reaching his decision that, had there been a duty upon the trustees to make a selection of beneficiaries, in other words, had the discretion conferred on them related only to the selection of beneficiaries from among the members of a specified class and had it not extended to include a decision on whether the fund (capital or income, as it might be) should be appointed or go in default of appointment, the trust would have been avoided.

That being so, it is always advisable when framing trusts of this kind to provide expressly for the distribution of the fund or its income, according as it is the capital or the income that is being dealt with, to or among a specified class of ultimate beneficiaries, either individuals or institutions, in default of appointment under the discretionary trusts. This may seem an unnecessary precaution when the peculiar circumstances in *Re Gestetner Settlement* are compared with the kind of discretionary class set up in a family settlement, where such a class usually comprises the settlor's child or children and the family or families (i.e., wife or husband and children) of such child or children; on the face of it, a class of the latter kind may always seem to be ascertainable, and the difficulty which arose in the *Gestetner* case may thus seem to be very remote. But it is of the essence of such trusts that a fairly long period is initially defined for their duration, a period which may last for a time sufficiently long for it to be possible that one member of the class should disappear in some far corner of the world, and the disappearance of even one beneficiary or potential beneficiary would be enough, in the absence of an ultimate trust for defined beneficiaries in defined shares, to bring the case within the mischief of the rule that, in the *Gestetner* case, was avoided only by the presence of such an ultimate trust.

"A B C"

Landlord and Tenant Notebook

SUB-TENANCY ASSIGNED WITHOUT HEAD LANDLORD'S CONSENT

WHEN, at the end of 1931, the owner of a Belgravia property let a flat to the first defendant in *Drive Yourself Hire Co. (London), Ltd.* v. *Strutt* [1953] 2 W.L.R. 953; *ante*, p. 317; for a term of twenty years, it is unlikely that anyone envisaged the possibility of the tenancy becoming controlled by Rent Act legislation. But when that lease expired in 1951 the plaintiffs in the action, successors in title to the said owner, found that the flat was occupied by the second defendant as tenant of the first defendant and, after considering the recent history of the flat, they decided to sue the first defendant for failure to deliver up, and the second defendant for possession.

The history was as follows. The head lease had contained a tenant's covenant not to underlet, etc., without the consent of the landlord. In 1932 the first defendant sub-let the flat, with the head landlord's consent, to a Mrs. S; the term was originally ten years, but was extended so as to expire one day before the expiry of the head lease. The consent was conditional on Mrs. S covenanting not to assign or sub-let without the consent of the head landlord; but he was not a party to the sub-lease, which forbade any assignment without her consent, and also contained the usual forfeiture clause.

The second defendant appeared on the scene in 1937. He was the managing director of a company formed to manage his country estates, and wanted the tenancy of the flat to be assigned to that company but the flat to be occupied by himself. The proposition was submitted to the head landlord, who consented by means of a licence which specifically provided for "use and occupation" of the flat by the second defendant.

In 1950 it appeared that the estate managing company had served or could no longer serve its purpose; at all events we had the unusual spectacle of one who had "turned himself into a limited company" reversing that process. His solicitors then inquired of the first defendant whether the consent of the head landlords (the plaintiffs, who had then acquired the property) was necessary to an assignment of the sub-tenancy from the company to the second defendant. She and her solicitors said no such consent was necessary; she gave her own, and the assignment was executed on 28th February, 1951. The sub-tenancy expired on 10th November, the head lease on 11th November; the second defendant retained possession, contending that he had done so as the first defendant's statutory tenant for one day, and since then as statutory tenant of the plaintiffs.

I do not propose to discuss the claims against the two defendants separately; it was established long ago by *Reynolds* v. *Bannerman* [1922] 1 K.B. 719 that a mesne tenant of protected premises is absolved from his duty to deliver up possession at the end of his term if the sub-tenant will not go, or at all events that he satisfies that duty by doing his best. The first defendant would, therefore, stand or fall by whatever happened to the case against the second defendant.

The plaintiffs sought to make their case in four ways. First, they said that the second defendant was not in lawful occupation of the flat. The allegation is somewhat vague, but it seems that they meant that his title, to use conveyancing language, was defective.

Their contention was that the condition of the licence to sub-let had not been complied with, the condition, that is, that the sub-tenant should not assign without the consent of the head landlord as well as that of the mesne tenant. The head landlord had, as Lynskey, J., said, desired and intended to retain control of any assignment of the sub-lease by the sub-tenant (the report says "sub-lessor" but I think "sub-lessee" must have been meant) and to prevent such assignment without his consent; but, the learned judge continued, by the terms of his licence and the covenant in the sub-lease did he succeed in doing so? It was held that there was no escape from the principles expounded in *Williamson* v. *Williamson* (1874), L.R. 9 Ch. 729, and *Mackusick* v. *Carmichael* [1917] 2 K.B. 581, two authorities of many which show how difficult it is for a landlord so to retain control. This may be particularly galling to landlords of premises within the Rent, etc., Restrictions Acts, especially in such circumstances as those described; for a limited company has, as has often been demonstrated, no security of tenure under those Acts. And Lynskey, J., declined to read into the licence which had been granted any implied obligation on the first defendant to enforce the covenant in the sub-lease.

So the second defendant had become tenant; and the next question was whether he was a lawful sub-tenant for the purposes of the Acts, so that the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (3), would apply to him: "Where the interest of a tenant of a dwelling-house . . . is determined either as the result of an order . . . or for any other reason . . . any sub-tenant to whom the premises . . . have been *lawfully* sub-let shall . . . be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued."

The fact that the second defendant was not the actual grantee of the sub-tenancy did not matter; the interpretation clause saw to that: "tenant" includes any person deriving title under the original tenant, and includes "sub-tenant" (Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*f*) and (*g*)). But there was this novelty: the sub-tenancy had expired before the mesne tenancy had expired, and, Lynskey, J., pointed out, s. 15 (3) did not itself go far enough to protect an ex-sub-tenant in such circumstances. But, on reading it with s. 15 (1) and the above-mentioned s. 12 (1) (*g*), the conclusion was that the provisions of s. 15 (1) ("a *tenant* who by virtue of the provisions of this Act retains possession . . . shall be entitled to the benefit of all the terms and conditions of the original contract of tenancy"), coupled with the provision of s. 12 (1) (*g*) by which "tenant" includes sub-tenant, continued the second defendant's tenancy, first against the first defendant and then against the plaintiffs. He held on the same terms as those on which he would have held if the first defendant's tenancy had continued (which, incidentally, gave the plaintiffs an increased rent—£200 as against £150; they may, if they know about the decision in *Glossop* v. *Ashley* [1922] 1 K.B. 1 (C.A.), consider themselves in so far lucky, for in that case the figures were £24 and £130).

The second defendant was thus a tenant and was a statutory tenant; there remained the question of grounds for possession to be sought in Sched. I to the Rent, etc., Restrictions

(Amendment) Act, 1933, among which the plaintiffs selected two, those given in paras. (*a*) and (*b*). It was contended that an obligation of the tenancy had been broken or not performed when the company assigned the tenancy to the second defendant without the plaintiffs' consent. On this, Lynskey, J., held that there was "in a sense" not a breach, but a non-performance of a covenant in the sub-tenancy, namely, the covenant not to assign without that consent—but that covenant did not create an obligation enforceable by the plaintiffs, and the words "obligation of the tenancy" in para. (*a*) meant "of the tenancy under which the tenant holds at the time of the non-performance."

The last point pursued was that, in the words of para. (*d*) of that Schedule, the tenant without the consent of the landlord had assigned the whole of the dwelling-house. To which the short answer was that the plaintiffs were not the second defendant's landlord at the time, and the first defendant, who was then his landlord, had given her consent. R. B.

PRACTICAL CONVEYANCING—LXI

ABSTRACTING WILLS

It is surprising how often one still sees abstracts setting out the terms of wills of persons who died after 1925. One of the major consequences of the 1925 legislation was that wills took effect in equity only and so, with very rare exceptions, they should not appear on the title to a legal estate. The legal estate vested in the testator passes to his personal representatives whatever devise may be contained in the will. Until the representatives make an assent they remain able to give a good title to a purchaser who is not concerned to inquire whether there is any need to sell for administration purposes. Similarly, if there has been an assent, it operates for the benefit of a purchaser as sufficient evidence that the person in whose favour it is made is the person entitled to have the legal estate, unless notice of a previous assent or conveyance has been placed on or annexed to the probate or letters of administration. Thus, whether sale is by the personal representatives or by a person in whose favour they have assented, the purchaser is not concerned with the contents of the will.

To most solicitors these remarks will appear elementary, yet there are many who still hesitate before placing a will "behind the curtain." Probably there are even more who seek unjustifiably to look behind the curtain.

THE EXECUTOR'S EXECUTOR

The title which caused the writer to make the above comments was one in which a sole executor had died after proving the will, but before completing administration of the estate. Fortunately, in turn, he had appointed an executor who proved his will.

"An executor of a sole or last surviving executor of a testator is the executor of that testator" (Administration of Estates Act, 1925, s. 7 (1)); "so long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator" (*ibid.*, s. 7 (2)). These rules are quite well known and their application normally causes no difficulty, but there is sometimes a tendency to hesitate before accepting a title from the second or later executor in the chain.

Provided the usual precautions are taken there need be no danger to a purchaser who is asked to take such a title. It is essential, of course, that each probate should be inspected to see whether there is any endorsement of an assent. Further, the purchaser should obtain the usual statement in writing (by recital or otherwise) that there has been no previous assent or conveyance.

Some doubt has at times been thrown on the protection given by the statement of no assent or conveyance where it is made by the second or later executor in the chain. It is asked how the person making it can properly assert that a previous executor has not made an assent which has not come to his notice. A close examination of the statutory provision relating to such statements (Administration of Estates Act, 1925, s. 36 (6)) shows, however, that there need be no difficulty. This subsection provides that "a statement in writing by a personal representative that *he has not given or made* an assent or conveyance in respect of a legal estate, shall . . . be sufficient evidence that an assent or conveyance *has not been given or made* in respect of the legal estate to which the statement relates." The conclusion appears inescapable that, if the executor making title states that he has not assented, the purchaser is protected against an assent by an earlier executor in the chain unless there is an endorsement on the relevant probate. Whether the section was worded with this object in mind may be doubtful, but the result appears to be most reasonable and convenient.

VENDOR OF UNSOUND MIND

One of the main difficulties of conveyancing practice is to bear in mind the procedure to be adopted in transactions of a type which do not arise frequently. Perhaps the problem is merely an example of the well known fact that a solicitor must necessarily very often be far more concerned to know how and where to find a statement of law or practice than to endeavour to remember the details. Consequently, an occasional reminder of the existence of authoritative accounts of law or practice may be useful even if space does not permit the printing of them in full.

An example which a solicitor may be inclined to overlook until after he has taken some inconsistent step is the "Notes on Sales of Land and House Property," issued by the Court of Protection. A knowledge of the contents of these notes may help a purchaser's solicitor, but their greatest value is to a solicitor acting, or intending to act, for the receiver of the estate of a person of unsound mind who is selling or proposing to sell land forming part of the estate. The notes outline (i) the procedure for application for an order authorising sale, (ii) the circumstances in which the receiver may make a conditional agreement for sale prior to an order, (iii) the special conditions which should be inserted in the contract (where sale is by auction and by private treaty respectively) and (iv) the procedure for settlement and approval of a purchase deed. With the assistance of these notes the relatively unusual transaction of sale by a receiver can be carried out with the minimum of inconvenience.

Attention is also drawn to the arrangements made by The Law Society with the Court of Protection in order to avoid the need for solicitors acting for receivers on the sale or purchase of property to advance money for stamp duty and similar expenses. These are explained in the *Law Society's Gazette*, May, 1949, p. 130, and January, 1953, p. 31.

TOWN AND COUNTRY PLANNING ACT, 1953

This Act received the Royal Assent on 20th May, 1953. The most immediate difficulty for conveyancers is likely to be the assignment of claims for loss of development value having regard to the changed basis of the compensation provisions. This subject was discussed. so far as problems will arise between vendor and purchaser, in these columns last week (*ante*, p. 367). It is proposed to deal with a few other points arising from the new Act shortly.

Now that the contents of the Act are known The Law Society are able to publish a new edition of their Conditions of Sale. These will, it is understood, involve a few important changes from the former rules and a number of minor amendments. Assuming early publication, a series of articles on the new 1953 Conditions will commence shortly. J. G. S.

HERE AND THERE

THE CHALLENGED TITLE

IT is not exactly Flodden Field or Culloden, this initial defeat of the Scottish Covenant Association over the legality in Scotland of the royal title "Elizabeth II," the use of which, declared the petition, is a violation of the Treaty of Union of 1707 and may give rise to disturbances, breaches of the peace and violence, to the grievous distress, harm and damage of the citizens of Scotland. Lord Guthrie, holding that the style was assumed under the authority of the Royal Titles Act, 1953, and refusing to declare the statute *ultra vires*, held the petition "incompetent and irrelevant," a technical expression this, by the way, and not a term of abuse, as some English journalist seemed to imagine when he headlined the story: "Scots' petition called incompetent." But that is obviously not the end of the battle, for Dr. John MacCormick, Rector of Glasgow University and Chairman of the Association, and his two million followers are unlikely to sound the retreat before they have fought it out in the upper regions of the Court of Session and even perhaps in the House of Lords. (The Scots, incidentally, are litigiously in a happier position than the English, in that they can take their appeals to the Lords without a "by your leave" from anyone.) Strange as it may seem to the English, it is not just a "lunatic fringe" nor what the Prime Minister recently called "the silliest Scots" who are taking the matter to heart. There are quite a lot of things about the English connection that perfectly sensible Scots are unhappy about and this to them is a point of principle which bears on that relationship. Unfortunately the empirical English have very little patience with points of principle as such, especially when they feel they are being raised at an unreasonable time. Coronation time seems to them hardly the happiest moment to challenge Her Majesty's titles, just as they felt that a desperate war was hardly the occasion to challenge the right of the English Legislature to impose conscription in Scotland, another point which a Covenant champion raised before the Scottish courts a few years ago. But the Scots might reasonably retort: If not then, when? It is not the first time that there has been trouble in the north over a royal title. In 1901, 250,000 Scots "as loyal British citizens" signed a protest against Edward VII calling himself Edward VII in Scotland, on the ground that beyond the Tweed he was Edward I. Nothing was done then, and so the question recurs now. You will have noticed, of course, that Eire has her own special Coronation grievance in that the royal title includes Northern Ireland among Her Majesty's territories, and Eire refuses to admit the lawfulness of the severance of the Six Counties from integral Ireland.

SCOTTISH GRIEVANCES

THE Royal Commission on Scottish Affairs (of which hardly anybody on this side of the Border seems to have heard) has a chance of putting the whole business into an intelligible context for the English, whose dominant impression seems to be that the Scots have all the luck they can reasonably ask for in being allowed to come and make money in England. But several points have already emerged. It is complained that, if proposed legislation affects only Scotland, it is almost impossible to get it through Parliament, and that particular grievance, incidentally, is as old as Gladstone. Whether it's Scottish housing, Scottish rating, the upkeep of Highland roads or a modification of the royal title, nothing (they say) is done about it. On top of that, government by Whitehall and the whole business of benevolently pushing people around for their own good has helped on a strongly nationalist reaction and an increasingly urgent demand that Scotland should be allowed to mind Scotland's business. Breaches of the Treaty of Union are noted and debated. Did you know, for instance, that it provided for the maintenance of a Mint in Scotland as well as England? Yet very soon after the Treaty the Scottish Mint ceased operations, save that for more than a century officials were appointed to it and salaries paid.

PEERAGE CLAIM

IF one Scottish claim has failed before Lord Guthrie, another has succeeded before the Committee of Privileges, where Lord Dudhope (formerly Mr. Henry Scrymgeour-Wedderburn, M.P.) has completed his success of last July, which confirmed him in a Viscountcy, by now establishing his right to the Earldom of Dundee, just in time to secure the appropriate robes for his appearance at the Coronation as Hereditary Standard Bearer for Scotland. It is said that, while the costs of the earlier claim amounted to about £2,000, those of the second were barely a third of that, for much of the ground had been covered at the first hearing. The Committee of Privileges sits neither in the Lords' Chamber nor in the same room as the Appellate Committee, but in the Moses Room just off the Lords' lobby. It is lit by a skylight and two of its walls are decorated by enormous paintings of incidents in the life of Moses. The spaces for the remainder intended to complete the series remain blank and unfilled. The procedure is informal, the committee composed both of lay peers and Law Lords sitting without robes at a long table, facing the array of robed counsel at another table. One brief passage in the course of the argument is perhaps worth recording for its picturesqueness. A Scottish leader quoted Lord Sands, a judge of the Court of Session, who once said: "If you told me that a seagull was perched on the roof of this court, formal evidence would satisfy me, but if you told me there was a golden eagle I should require very cogent evidence." The same leader apologised for producing a standard text-book of which the latest edition was that of 1887. "It is no longer an economic proposition," he explained, "to publish a book on the law of Scotland; the public is so small."

RICHARD ROE.

REVIEWS

Oyez Practice Notes, No. 20: Conveyancing Costs. By J. L. R. ROBINSON. Second Edition. 1953. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

The welcome increases in certain aspects of solicitors' remuneration in conveyancing matters brought into operation on 1st March, 1953, have necessitated a new edition of this useful booklet. The general layout of the previous edition has been followed and reference to the new scale fees is made correspondingly easy. A new section has been added on "Minimum Fees" and the text dealing with Sched. I has been brought up to date where necessary.

Of greatest interest to practitioners will be Pt. III of the booklet, which has been completely re-written in consequence of the entire change in the basis of charging under Sched. II of the Solicitors' Remuneration Order, 1883. Notwithstanding its obsolescence, the old Sched. II incorporated elements of certainty in the fees for perusal and preparation of documents and attendances upon the client and other persons, while the fees for the discretionary item of "instructions" had become recognised by long usage. Without such advantage, the enunciation of principles for ascertaining the amounts of bills of costs under the new Sched. II presents a number of difficulties. Of the seven particular points requiring consideration in preparing Sched. II bills, emphasis is rightly placed on the importance of keeping accurate records of the time expended by the solicitor as being the one item concerning which a measure of certainty

can be arrived at. Although charging under the new Sched. II will no doubt become, in due course, a matter of routine once a settled practice has been built up, the suggestions in the present booklet will provide a valuable basis from which to start.

The author and publishers are to be congratulated upon the expedition with which they have produced so comprehensive a guide.

The Secretarial Practice of Local Authorities. By W. ERIC JACKSON, LL.B., Barrister-at-Law, Assistant Clerk of the London County Council. 1953. Cambridge: W. Heffer & Sons Ltd. 20s. net.

The publication of this book was sponsored by the Council of the Chartered Institute of Secretaries, and the President's Foreword states that the Council in so doing had the following three purposes in mind: first, to provide a concise account of those subjects which most closely affect local government officers who are engaged on work of a secretarial nature; second, to provide a manual of instruction for students preparing for examinations of the Institute; and third, to assist towards the establishment of a general standard of secretarial practice by which local authorities and their officers could be guided in formulating their own local codes of practice.

In the preface the author suggests that he has attempted to lay down a broad code of practice on many matters of detail which he has described as "secretarial practice." No doubt the title of the book is somewhat influenced by the interest of the Chartered Institute of Secretaries, but nevertheless it is a good description of the contents. Substantially the book consists of a statement of rules of law the knowledge of which would be useful to committee clerks and similar members of the staffs of local authorities, and, in more detail, an outline of typical practice on such matters as preparation of agenda and minutes, and the work of securing co-ordination of departments.

It would be possible to criticise some of the statements of rules of law, such as those involved in the *ultra vires* doctrine or in the contractual powers of local authorities, but it may well be that a greater degree of accuracy would make the book too lengthy and less valuable for the persons for whom it is designed. The inclusion of a chapter on Promotion of Legislation is probably unwise, as few of the persons for whom the book is intended will have a sufficient concern with private bills to justify a study of the procedure.

The only substantial criticism we would make is that the book does not place sufficient emphasis on the variations of practice, and in many places assumes the adoption of particular methods which probably exist in only a few large counties and county boroughs. For example, the authorities in which a committee clerk has the wide discretion assumed in chapter 9 are very few, although that small number may well consist mainly of the larger and more important authorities. Similarly, it is thought that few chairmen of the committees of authorities of average size concern themselves with the detail mentioned at p. 46.

The conclusion is that this is a useful book for those members of the staffs of local authorities who are likely to be interested in the examinations of the Chartered Institute of Secretaries. As an attempt to state a general practice it is well worth reading by many others, but, at least for the purposes of a person employed in a clerk's department, the volume on "The Clerk of the Council and his Department" published by the Society of Clerks of Urban District Councils is more complete and more objective.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CEYLON: CROWN SERVANT: CONTRACTUAL AUTHORITY

Attorney-General for Ceylon *v.* A. D. Silva

Lord Porter, Lord Tucker, Lord Asquith of Bishopstone and Mr. L. M. D. de Silva. 12th May, 1953

Crown property, consisting of certain naval war supplies—in particular, a quantity of steel plates—lying on customs premises in Ceylon was advertised for sale by public auction on 4th March, 1947, in the Government Gazette by the Principal Collector of Customs who, by mistake, had treated the goods as unclaimed and had obtained the sanction of the Chief Secretary to sell them. The basis on which the collector held the sale was that warehouse rent was due under s. 17 of the Customs Ordinance (Legislative Enactments of Ceylon, 1938, c. 185) on the goods and that as they had been left on the customs premises for more than three months they were liable to be sold after public advertisement under s. 108 of the Ordinance. Some weeks before the sale, however, an officer of the Services Disposal Board in Ceylon, who had been appointed by the Ministry of Supply in England, who had taken over the goods in November, 1946, had contracted on 23rd January, 1947, to sell the goods to a Ceylon firm, Maharajan & Co. At the auction sale on 4th March, 1947, the respondent, A. D. Silva, bought some steel plates and other goods, and on the refusal of the Principal Collector, on becoming aware of the earlier contract, to deliver the goods to him, the respondent claimed against the Attorney-General for Ceylon, as representing the Crown, damages for breach of contract. The district judge held that no valid contract between the respondent and the Crown had been established and dismissed the action. The Supreme Court of Ceylon, on 31st May, 1951, held that there had been a valid contract and awarded the respondent Rs.40,000 by way of damages. The Crown appealed.

MR. L. M. D. DE SILVA, giving the judgment, said that the question was whether a contract binding on the Crown had been shown to have arisen. The Principal Collector of Customs had no authority, actual or ostensible, to enter into a contract binding on the Crown for the sale of the goods to the respondent. The Customs Ordinance was not made binding on the Crown by an express term in the Ordinance (s. 3 of the Interpretation Ordinance), and there was nothing in the provisions of the Ordinance or in the schedules thereto from which it could be inferred that the Crown was bound by the Ordinance by necessary implication. The provisions of the Ordinance were therefore inapplicable to property belonging to the Crown, and the collector had no actual authority to sell the goods. A public officer had not by reason of the fact that he was in the service of the Crown the right to act for and on behalf of the Crown in all matters which concerned the Crown; his right to act for the Crown in any particular matter must be established by reference to statute or otherwise. It had not been shown that the collector had any authority to sell property of the Crown or to enter into a contract on its behalf for its sale; nor had it been shown that the Chief Secretary, who authorised the sale, had any such authority; his functions were defined by the Ceylon (State Council) Order in Council, 1931, under which he was authorised at most to deal with certain Crown property under the direct administration of the Government of Ceylon. The collector had, therefore, on that basis also, no actual authority to enter into the contract for the sale of the goods. Nor had he ostensible authority so to do. All "ostensible" authority involved a representation by the principal as to the extent of the agent's authority. No public officer, unless he possessed some special power, could hold out on behalf of the Crown that he had the right to enter into a contract in respect of the property of the Crown when in fact no such right existed. The act of the collector in advertising the goods for sale could not be said to be the act of the Crown, and nothing done by the collector or by the Chief Secretary amounted to a holding out by the Crown that the collector had the right to enter into a contract to sell the goods. The judgment of the Supreme Court proceeded largely on the basis of an admission said to have been made on behalf of the Crown to the effect that s. 17 of the Ordinance

applied to the Crown, but assuming that the Supreme Court had rightly understood the admission, the Board could not be bound on a question of law by an admission which, in their opinion, would involve an erroneous construction of the Ordinance. Appeal allowed.

APPEARANCES: *Gilbert Paull*, Q.C., *Frank Gahan*, Q.C., and *Walter Jayawardena* (*Burchells*); *Phineas Quass*, Q.C., *R. K. Handoo* and *Carl Jayasinghe* (*T. L. Wilson & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 1185**

COURT OF APPEAL

BETTING AND LOTTERIES ACT, 1934: BOOKMAKER'S REMEDY FOR OVERCHARGE BY CRIMINAL PROCEEDINGS ONLY

Green *v.* Portsmouth Stadium, Ltd.

Denning and Hodson, L.JJ. 27th April, 1953

Appeal from Parker, J. ([1953] 1 W.L.R. 487; *ante*, p. 172).

The plaintiff alleged that as a bookmaker he had over a period of years, and contrary to the provisions of s. 13 (1) of the Betting and Lotteries Act, 1934, been overcharged by the defendants, the owners and occupiers of a dog racing course licensed under the Act of 1934. He claimed from them the excess fees paid by him as money had and received by them to his use. Before Parker, J., the defendants on a preliminary point of law contended that since s. 13 was a penal section, the obligation which it imposed was enforceable only by criminal and not by civil proceedings.

Parker, J., held on the basis of the observations of Lord Mansfield, C.J., in *Browning* v. *Morris* (1778), 2 Cowp. 790, 792, that although s. 13 was a penal section and the contract made between the defendants and the plaintiff on each occasion of his admission to the stadium was an illegal contract, the parties were not *in pari delicto* and an action to recover the excess payments would lie, since the plaintiff's claim was not a claim under the Act but only an indirect method of enforcing the obligation under s. 13. The defendants appealed *in limine* on the ground that the plaintiff's statement of claim did not disclose a cause of action.

DENNING, L.J., said that the only ground on which the plaintiff sought to recover the overcharge was that there was a breach of the statute. It was significant that s. 13 of the Act did not say that the overcharge should be recoverable, but only that the person responsible "shall be guilty of an offence." The presumption was that where the statute provided penalties for a breach, no other remedy was available. In *Cutler* v. *Wandsworth Stadium, Ltd.* [1949] A.C. 398 the House of Lords considered the statute as a whole and this part of it in particular and said it was not a bookmakers' charter. It was for the regulation of racecourses, and the mode of regulation was by means of the criminal courts and not by way of civil action.

Parker, J., had been impressed by the fact that this was an action for money had and received, to which different considerations might apply, and reference had been made to the judgment of Lord Mansfield in *Browning* v. *Morris* as to remedies by civil action where the parties were not *in pari delicto*; but in his (his lordship's) judgment those observations only applied where the statute, on its true construction, contemplated the possibility of a civil action, and he saw nothing in this statute to authorise such an action. The appeal should be allowed.

HODSON, L.J., agreed. He said that the plaintiff had not pleaded any facts tending to show that he was not *in pari delicto* with the defendants. Parker, J., had concluded that the plaintiff was not seeking to enforce directly an obligation created by s. 13 of the Act. But there was no escape for the plaintiff from the effect of the decision in *Cutler's* case. The claim for money had and received was based on the payment which was said to have been made in contravention of s. 13, and the plaintiff could not bring a civil action for breach of that section. The appeal must be allowed.

APPEARANCES: *Ewen Montagu*, Q.C., and *E. B. McLellan* (*Brash Wheeler, Chambers, Davies & Co.*, for *Glanvilles*, Portsmouth); *Robert Hughes* (*D. H. Browne*, for *H. F. E. Mathews*, Portsmouth).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 1206**

ELECTRICITY REGULATIONS: DAMAGE RESULTING FROM BREACH: DEFECTIVE JOINT IN CABLE

Gatehouse *v.* John Summers & Sons, Ltd.

Lord Goddard, C.J., Birkett and Hodson, L.JJ.

5th May, 1953

Appeal and cross-appeal from Pearson, J.

The plaintiff brought an action against her late husband's employers claiming damages under the Fatal Accidents Acts and under the Law Reform (Miscellaneous Provisions) Act, 1934, in respect of the death of her husband, who was employed as an electrician at the defendants' steel works. In the works a travelling crane with an electric magnet weighing several tons was used for the purpose of moving steel scrap, the crane running on rails on a travelling gantry which was situated some twenty-six feet above the ground. On the 9th April, 1951, the deceased was called on to adjust the magnet cable on the crane which had come off the magnet cable drum with the result that the drum jammed. No electric current was passing through the cable at the time, the current which passed through it normally being only used for electrifying the magnet and being unconcerned with the lifting apparatus of the crane. The deceased, in order to free the magnet cable, stepped off the walkway on the gantry and stood with one foot on the crane rail and the other on the flange of the crane carriage, an admittedly dangerous position. He placed both hands on the cable in order to pull it into place when, owing to a defective joint in it, the cable broke and the man fell backwards and suffered injuries from which he died. The plaintiff alleged that there had been a breach by the defendants of their duty under s. 24 (1) of the Factories Act, 1937, in that the cable being part of a lifting machine was required by the section to be of sound material or of adequate strength or free from patent defect. She further alleged a breach of reg. 6 of the Electricity (Factories Act) Special Regulations, 1908 and 1944 (S.R. & O. 1908, No. 1312) which provides that "every electrical joint . . . shall be of proper construction . . . as regards mechanical strength and protection." Pearson, J., held that the main cause of the accident was the breaking of the electrical joint and, without deciding the question of the defendants' liability for negligence at common law, found that there had been a breach both of s. 24 (1) and reg. 6. He held that the deceased man was responsible for the accident to the extent of 25 per cent. and reduced the damages of £4,500, to which he found the plaintiff entitled, to that extent. The defendants appealed and the plaintiff cross-appealed on the finding of contributory negligence.

LORD GODDARD, C.J., said that Pearson, J., in addition to his findings in regard to the statutory duty of the defendants, should also have found that there had been a breach by them of their common-law duty to provide proper or suitable plant. That would have been a ground on which the judgment could have been supported apart from any other; and further the court saw no reason for disagreeing with the finding that the deceased man had contributed to the accident to the extent of 25 per cent. by standing in a dangerous position and pulling on the cable with both hands. There was, however, a breach by the defendants of their statutory duty under the regulation, but not a breach of s. 24 (1) of the Factories Act, 1937, because the cable which broke was not part of the lifting machinery to which s. 24 related but a mere electrical lead which had nothing to do with raising the magnet. Though the main object of the regulations was to protect workmen from electrical injury reg. 6 provided that every electrical joint and connection should be of proper construction as regards, among other things, mechanical strength. An electrical installation which included dynamos, engines and so forth, would also include cables and perhaps pylons used for the transmission of electricity from one point to another. On the words of reg. 6 an electrician working on an electrical installation, although current was not, for the moment, passing through the cables, was none the less entitled to assume that the electrical cable was safe and of proper construction as regards mechanical strength and protection. If the workman found it necessary to haul on the cable he was entitled to assume that the regulation had been complied with and that if there was an electrical joint it would have been so constructed that the cable would be as strong as it had been before the joint was made. It did not matter whether the injury sustained by the workman was an electrical burn or shock or some other form of injury, provided that it arose from a defect in the electrical joint: it came within reg. 6. On that

ground, as well as on the breach of the defendants common-law duty, the plaintiff was entitled to succeed, and the defendants appeal would accordingly be dismissed.

BIRKETT and HODSON, L.JJ., delivered assenting judgments.

APPEARANCES: *H. Edmund Davies*, Q.C., and *W. L. Mars-Jones* (*Carpenters*, for *Laces & Co.*, Liverpool); *F. W. Beney*, Q.C., and *F. Elwyn Jones*, Q.C. (*Rowley Ashworth & Co.*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] [**1 W.L.R. 742**

CHANCERY DIVISION

SETTLED LAND: REPAIRS EXECUTED BEFORE 1948: LIFE TENANT'S RIGHT TO RECOUPMENT

***In re* Sutherland Settlement Trusts**

Harman, J. 23rd April, 1953

Adjourned summons.

The Settled Land Act, 1925, provides by s. 73 (1) (as amended with effect from 1st March, 1948, by s. 96 (1) of the Agricultural Holdings Act, 1948): "Capital money arising under this Act . . . shall . . . be . . . applied . . . in one . . . of the following modes . . . (iv) in payment as for an improvement authorised by this Act of any money expended and costs incurred by a landlord under or in pursuance of the Agricultural Holdings Act, 1923, or any similar previous enactment, or under custom or agreement or otherwise in or about the execution of any improvement comprised" in Sched. III to the Act of 1948. By s. 75 (2): "The investment or other application by the trustees [of capital moneys] shall be made according to the direction of the tenant for life . . ." By s. 83: "Improvements authorised by this Act are the making or execution on . . . the settled land of any of the works mentioned in Sched. III to this Act . . ." By s. 107 (1): "A tenant for life . . . shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall . . . be deemed to have the duties and liabilities of a trustee for those parties." The Agricultural Holdings Act, 1948, provides by s. 81 (1): "Where under powers conferred by the Settled Land Act, 1925 . . . capital money is applied in or about the execution of any improvement specified in Sched. III to this Act, no provision shall be made for requiring the money . . . to be replaced out of income, and accordingly such improvement shall be deemed to be an improvement authorised by Pt. I of Sched. III to the Settled Land Act, 1925." Improvements in Sched. III to the 1948 Act include "(23) Repairs to fixed equipment, being equipment reasonably required for the proper farming of the holding, other than repairs which the tenant is under an obligation to carry out." In 1927 the tenant for life under a settlement comprising agricultural land conveyed his beneficial interest to a company. In 1945, 1946 and 1947 the company, as owner of that life interest, spent £4,457 13s. in executing on that land repairs the cost of which was not payable out of capital moneys arising under the Settled Land Act, 1925. From 1st March, 1948, when Sched. III to the Agricultural Holdings Act, 1948, became operative, until 1st December, 1950, the company executed similar repairs at a cost of £4,575 10s. 4d., which the trustees, at the direction of the tenant for life, pursuant to s. 75 of the Settled Land Act, 1925, paid to the company as and for an improvement authorised by the Settled Land Act, 1925, as being repairs of a nature specified in para. 23 of Pt. II of Sched. III to the Agricultural Holdings Act, 1948. The tenant for life also directed the trustees likewise to pay for the repairs executed before 1st March, 1948. The trustees, however, refused, on the ground that when they were carried out the cost of them was not payable, or expected by the tenant for life or the company to be paid, out of capital and so was not payable thereout under the Agricultural Holdings Act, 1948. By this summons the company asked that the trustees might be directed or authorised to apply £4,457 13s. in payment (as for an improvement authorised by the Settled Land Act, 1925) to the applicant in recoupment of a like sum expended by the applicant in the execution between 1945 and 1948 of repairs specified in para. 23 of Part II of Sched. III to the Agricultural Holdings Act, 1948, in relation to agricultural land subject to the settlement.

HARMAN, J., said that many of the improvements carried out before 1948 were ordinary maintenance repairs, of a type which nobody then would have dreamed of paying out of capital. Moreover, a large amount of the repairs were done to properties let to the tenant for life, which were, in effect, in hand. To pay for such things out of capital would mean a complete revolution in the established ideas about the relation between capital and income under the Settled Land Act. The applicants claimed that this revolution had been effected by an alteration of s. 73 (1) of the Settled Land Act by s. 96 (1) of the Agricultural Holdings Act, 1948, whereby the trustees must, at the direction of the tenant for life, pay for "as an improvement" items of expenditure which were "repairs to fixed equipment" within Sched. III to the later Act, even when carried out before that Act came into force. A tenant for life who gave directions to the trustees under s. 75 of the Act of 1925 must, by s. 107, have regard as a trustee to the interests of the remaindermen. It had been contended that "or otherwise" in s. 73 (1) (iv) meant "or not," but that rendered otiose the preceding alternatives; the *ejusdem generis* rule must be applied, and the true meaning was "otherwise under some obligation." Accordingly, if the matter were free from authority, these works voluntarily executed before 1948 could not be said to have been executed in pursuance of the Act of 1923 or any previous enactment, or of custom or agreement, or of any obligation otherwise; with the result that s. 73 (1) (iv) did not apply to them. It had been argued that *In re Duke of Northumberland, deceased* [1951] Ch. 202 precluded such a construction. In that case it was held that repairs going back to 1945, and apparently justifiable only under Sched. III to the Act of 1948, could be met out of capital. But certain arguments now adduced did not seem to have been met in that judgment; it seemed to have been argued that the Act of 1948 was substituted for the Act of 1923 in s. 73 (1) (iv); and it did not appear that in that case the tenant for life was in effect putting money in his own pocket by requiring repairs of property in his own occupation and so allowing his duty as a trustee under s. 107 to conflict with his personal interest. Under the circumstances, he (his lordship) did not feel bound to follow that case, and the expenditure incurred before 1948 could not be charged to capital. Application dismissed.

APPEARANCES: *Denys Buckley; E. I. Goulding* (*Taylor and Humbert*); *E. G. Wright* (*J. R. H. Chisholm*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [**2 W.L.R. 1163**

CHARITY: "RETREAT HOUSE" NO PUBLIC BENEFIT

***In re* Warre's Will Trusts; Wort *v.* Salisbury Diocesan Board of Finance and Others**

Harman, J. 28th April, 1953

Adjourned summons.

A testatrix gave the residue of her estate to the Salisbury Diocesan Board of Finance, as the holding trustee, on trust to establish a scheme for the future use of her residence. After providing what persons should be the administrative trustees, she continued: "The precise form of the scheme and, therefore, the final trusts of this my will shall be settled in their absolute discretion, but for the guidance of such administrative trustees in settling such scheme I now set out a rough outline which sets out my wishes: 'The property and income to be derived therefrom to be applied to the provision and upkeep of [so far as now relevant] . . . a retreat house . . .'." She further provided that any surplus income could be used by the trustees for either training ordination candidates or a certain ecclesiastical charity. She gave the trustees a further discretion that if the scheme "not be found to be of the best service in furthering the spread of Christianity . . ." to adopt certain alternatives which appeared charitable. A "retreat house" was a house devoted to a form of religious exercise known as a retreat, by which persons retired for a time from the activities of the world for religious contemplation and cleansing of the soul. The trustees took out a summons to determine whether the trusts of the residue constituted valid charitable trusts.

HARMAN, J., said that if the true construction of these trusts, which was the view to which he inclined, was that the wishes of the testatrix were merely precatory and not mandatory, the trustees would have an absolute discretion with no limits as to what they might direct, and the trusts would be void for uncertainty. If he were wrong about that, and the wishes of the testatrix were mandatory, these were not valid charitable trusts, because although a retreat house might be highly beneficial to the individuals who frequented it, it lacked the element of benefit to the public which, as laid down in *Cocks* v. *Manners* (1871), L.R. 12 Eq. 574, was essential to render a purpose charitable in the legal sense. Pious contemplation and prayer were, no doubt, good for the soul and might be of benefit by some intercessory process of which the law took no notice, but they were not, legally speaking, charitable activities. Even if the final clause disposing of the residue contained valid charitable

objects, that would not preserve the trusts if the preceding objects were invalid; and, accordingly, the trusts of the residue of the testatrix, not being exclusively charitable, were void for uncertainty.

APPEARANCES: *G. A. Rink* (*Darley, Cumberland & Co.*, for *Jonas & Parker*, Salisbury); *C. V. Rawlence* (*Taylor, Jelf & Co.*, for *Wilson & Sons*, Salisbury); *J. V. Nesbitt* (*Field, Roscoe & Co.*, for *Pye-Smith, Hulbert & Kildahl*, Salisbury); *Denys Buckley* and *B. J. H. Clauson* (*Solicitor for Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 725

WILL: POWER TO POSTPONE SALE: EFFECT OF SUBSTITUTIONARY GIFT

***In re* Rooke; Rooke *v.* Rooke**

Harman, J. 1st May, 1953

Adjourned summons.

The testator, who died on 26th November, 1948, by his will, dated 8th October, 1948, directed his trustees "if my house, farm, lands and premises known as Woodhouse and my live and dead stock have not been sold at the time of my death to as soon as possible after my death sell the same and after paying the costs of such sale the net proceeds shall fall into and form part of my residuary estate." The testator devised the whole of his residuary estate to his trustees upon trust "to permit and allow my wife to receive and enjoy the net income, dividends and use thereof during her life and on her death I give, devise and bequeath my said residuary estate to my trustees" upon trust for sale and conversion "to pay and divide the net proceeds unto and equally between my brother *S. T. R.* and my sisters *M. M. L.*, *L. A. T.* and *G. E. R.* and in case of either of my brother or sisters shall be dead at the time of my wife's decease I give their respective share of my residuary estate to their respective issue and if more than one equally between them I direct that my trustees during my wife's lifetime may if they deem it advantageous have full power to sell or vary all or any part of my estate and may retain any investment that my estate may consist of at my death although same may not be an investment allowed by law for the investment of trust funds." Six months before the date when the testator made his will the Metropolitan Water Board, pursuant to its statutory powers, announced that it proposed to build a reservoir in the area where the testator's farm lay, and this proposal had resulted in a sharp fall in the value of properties within or in the vicinity of the area of the proposed scheme. In November, 1949, the scheme was dropped. After the testator's death his widow continued to live on the farm and carry on its business. The persons interested in residue expectant on the death of the testator's widow made representations that it was the duty of the trustees to sell the farm forthwith. In April, 1950, the testator's sister *G. E. R.* died, a spinster. The questions raised by the summons were whether (1) the trustees had power in their discretion to postpone the sale of the testator's farm; (2) the gift to *G. E. R.* of a share in the testator's residuary estate failed by reason of the fact that she died in the lifetime of his widow without leaving issue.

HARMAN, J., on the first question, said there was no gift of the farm to anyone. There was a direction to sell it and for the proceeds to fall into residue, the widow having the revenue of the proceeds of sale for life. To be consistent, "investment" must be construed strictly, and could not mean the farm. It had been argued that there was an implied power to postpone sale by reason of the words of s. 25 of the Law of Property Act, 1925: "A power to postpone sale shall, in the case of every trust for sale of land, be implied . . . unless a contrary intention appears." There was such a contrary intention in the present will, where the direction to sell was imperative. During the argument reference had been made to *In re Ball* [1930] W.N. 111; 74 SOL. J. 298, in which Luxmoore, J., was reported to have said that s. 25 had not altered the law; but that was plainly not the case. Accordingly, the farm must be sold with all convenient speed. The second question was much encumbered by authority. Ever since *Doe d. Blomfield* v. *Eyre* (1848), 5 C.B. 713, there had been a general rule, often reluctantly followed, that where there was an absolute gift, followed by a gift over on the happening of a certain event, the prior gift was defeated on the happening of the event, though the gift over failed. But that rule did not apply if, on the true reading of the will, the gift over was only intended to operate in favour of some person who could take under it (*Hancock* v. *Watson* [1902] A.C. 14) and such a case could arise where the substitutionary gift was to the donee's children (*Hurst* v. *Hurst* (1882), 21 Ch. D. 278; *Smither* v. *Willock* (1803–4), 9 Ves. 233). In the present case it was plain that the gift to *G. E. R.* was only to be divested in favour of her children, so that her share devolved on her personal representative. Declarations accordingly.

APPEARANCES: *D. A. Ziegler*; *E. M. Winterbotham*; *C. G. Allen* (*Hunters*, for *Louch, Belcher & Co.*, Newbury); *Lane and Cottier*, for *Charles, Lucas & Marshall*, Newbury).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.P. 1176

TAX RESERVE CERTIFICATES: DISTRIBUTION OF INTEREST

Hutton *v.* Inland Revenue Commissioners

Upjohn, J. 1st May, 1953

Case stated.

The taxpayer appealed from a decision of the Commissioners for the special purposes of the Income Tax Acts, affirming additional assessments to sur-tax for the years 1943–44 to 1948–49 inclusive, which included as part of his income for sur-tax purposes the distribution by a company of interest on tax reserve certificates. Tax reserve certificates were created and issued as a result of a Treasury memorandum dated the 22nd December, 1941. The certificates carried interest at 1 per cent. per annum in so far as they were applied in payment of tax; this interest was by s. 29 of the Finance Act, 1942, exempted from tax. A company in discharging its liability to tax used tax reserve certificates to the value of £18,600 and interest on those certificates to the value of £78 13s. 4d. The company distributed to the appellant £39, being his share of the interest in proportion to his share holding in the company. The appellant claimed that the company was not bound to deduct tax in distributing this interest pursuant to r. 20 of the All Schedule Rules. He contended that the profit and loss account of the company was increased by a sum of £78 which by statute was exempted from tax.

UPJOHN, J., said that it was not in dispute, having regard to *Neumann* v. *Inland Revenue Commissioners* [1934] A.C. 215, that, if the company was entitled to regard the distribution of £78 as being the distribution of a sum which had not borne tax in its hands, then it was not entitled to deduct tax on making the payment, and that the sum so distributed was not subject to income tax or sur-tax in the hands of the payee. He had to consider whether it was the distribution of a fund which had not borne tax in the hands of the company. The solution was, in his judgment, to be found in these considerations: the company in the course of carrying on its business had made profits, upon which it had to pay tax. It could pay tax in two ways: either by waiting for the due date, and then paying cash out of its general fund standing to the credit of profit and loss; or by making an estimate of its tax liabilities and purchasing tax reserve certificates in advance of the due date, and in due course surrendering those tax reserve certificates and claiming interest thereon. If the company followed the latter course, the result was that its general fund standing to the credit of profit and loss was larger than it otherwise would have been. All that had happened was that the general fund standing to the credit of profit and loss had been swollen by the sum of £78. The case was analogous to receiving a discount on a trade debt. The company was left with a larger general fund to the credit of profit and loss and not with a separate item in its profit fund representing a tax-free item. Accordingly, in my judgment, the Special Commissioners had reached a correct decision, and the appeal would be dismissed.

Appeal dismissed.

APPEARANCES: *Geoffrey Tribe* (*Wigan & Co.*, for *Phipps and Troup*, Northampton); *F. Grant*, Q.C., *J. H. Stamp* and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 729

QUEEN'S BENCH DIVISION

(BIRMINGHAM ASSIZES)

BAILMENT: NEGLIGENCE: REQUISITIONING: TRANSFER OF REQUISITION

Blount *v.* War Office

Ormerod, J. 1st April, 1953

Action.

A landowner made an arrangement with the War Office, who were requisitioning his house, whereby he was allowed to leave certain of his valuable goods in a locked strong-room in the

house. Some years later the War Office purported to transfer the requisition to the Ministry of Works, who subsequently purported to pass it to the Ministry of Agriculture. The latter Ministry used the house for the accommodation of displaced persons from Europe, but exercised so little control or discipline over them that two of them broke into the room and stole some of the goods there stored. The plaintiff brought this action, alleging that there had been a bailment of the goods by him to the defendants, that they had been negligent as bailees, and that in consequence of their negligence he had suffered loss in that the articles had been stolen.

ORMEROD, J., said that in the circumstances as it appeared to him the defendants, in allowing the plaintiff to store his goods and to leave them in this strong room, did in fact take possession of the goods, and were clearly bailees of the goods. It was a voluntary bailment, of the type which was generally known as a depositing bailment. The next question was whether or not there was negligence on the part of the defendants in the performance of their duty as bailees which resulted in the loss of this property. As this was a voluntary bailment, the standard of care required was the reasonable care which any man would take of his own property. He found it hard to believe that any reasonable man would not have taken greater precautions with his own property, and there was clearly negligence. Transfer of property from one requisitioning authority to another was no doubt of great convenience, but he saw nothing in the Defence (General) Regulations to justify the contention that one authority may transfer the requisitioned property to another authority, and thereby divest itself of all responsibility with regard to that requisition. He was satisfied that in the circumstances the defendants could not, without the consent of the plaintiff, which admittedly was never given, divest themselves of the responsibility for that bailment merely by transferring, or purporting to transfer, the requisition from themselves to the Ministry of Works or to any other competent authority. This arrangement was something which was merely collateral to the actual requisition, and even if the defendants had the power to transfer the requisition to another authority, it did not follow at all that they could at the same time, without the consent of the owner of the goods, transfer their responsibility for the bailment of these goods. There would be judgment for the plaintiff for the amount claimed of £1,033, with interest at 5 per cent. up to the date of the judgment, with costs.

APPEARANCES: *J. F. Bourke* (*Weston, Fisher & Weston*, Kidderminster); *A. E. James* (*Beale & Co.*, Birmingham, for the *Treasury Solicitor*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 736

DOCKS: DISCHARGE OF IRON ORE: NECESSITY FOR SIGNALLER AT HATCHWAY

Johnson *v.* A. H. Beaumont, Ltd., and Another

McNair, J. 29th April, 1953

Action.

The plaintiff was employed by the first defendants as a trimmer to help in the removal of ore from the hold of a ship moored at the second defendants' jetty. When sufficient ore had been moved by the first defendants' trimmers, the second defendants' signallers stationed at the hatchway warned them to take cover while a crane with a grab operated by the second defendants descended into the hold to remove the ore. During the unloading the signaller left his post to get another lamp, one of the two lights in the hold having failed, and told the crane man to remove ore from the centre where he could see. The grab, in descending, landed on the plaintiff's foot. The plaintiff claimed damages against both defendants for breach of statutory duty, alleging that the hold was not efficiently lighted contrary to regs. 3 and 12 of the Docks Regulations, 1934, and that the absence of the signalman constituted a breach of reg. 43, which provides: "When cargo is being loaded or unloaded by a fall at a hatchway, a signaller shall be employed . . ."

MCNAIR, J., said that the effective cause of the accident was twofold: first, the act of the signaller in leaving his post and, second, the act of the craneman in lowering the grab in the absence of the signaller. The lack of an efficient light was not an effective cause but merely an incident in the story. As to the regulations, reg. 3 did not apply to a ship, and reg. 12, which did, had not been infringed. As to reg. 43, *Ashworth* v. *J. McQuirk & Co., Ltd.* [1944] 1 K.B. 1 showed that a signaller must be present when any act of unloading took place. The provisions dealing with duties required "every person who by himself, his agents or workmen carries on the processes" to comply with reg. 43, so that the second defendants were plainly in breach. The first defendants also were carrying on part of the processes and were, at any rate *vis-à-vis* their own men, responsible for a failure to provide and keep a signaller. Both defendants were, therefore, liable for breach of statutory duty. Judgment for the plaintiff.

APPEARANCES: *John Thompson* (*W. H. Thompson*); *N. Faulks* (*Simmons & Simmons*); *Ryder Richardson*, Q.C., and *J. May* (*Dennes & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 1153

INFANT: APPRENTICESHIP DEED: ARBITRATION CLAUSE BINDING

Slade and Another *v.* Metrodent, Ltd.

McNair, J. 11th May, 1953

Summons adjourned into open court.

By an indenture dated 31st August, 1949, made between a company, the second plaintiff, John Frederick Slade, and the first plaintiff, Alan John Slade, an infant, the infant plaintiff placed himself as apprentice to the company to learn the craft of dental mechanics from the 5th September, 1949, for five years. The indenture contained a clause whereby the parties agreed that all questions or difference which might at any time arise between the parties relating to the subject-matter of the indenture should be referred to the National Joint Council for the Craft of Dental Technicians. In 1950, all rights, liabilities and obligations of the company were transferred to the defendant company, Metrodent, Ltd. In February, 1953, the infant plaintiff, by his father, the second plaintiff, and the second plaintiff on his own behalf issued a writ against the defendants claiming that the defendants, in breach of their obligations under the indenture, had failed to teach or instruct the infant plaintiff and had repudiated the indenture. On the 5th March, 1953, the defendants, relying on the clause providing for submission to arbitration, applied to Master Burnand for a stay of further proceedings pursuant to s. 4 of the Arbitration Act, 1950. The master having refused a stay, the defendants appealed to McNair, J., who adjourned the summons into open court for judgment.

MCNAIR, J., said that it had been argued for the infant (1) that, on principle, an agreement by an infant to submit to arbitration was voidable at his election, and (2) if not, the court as a matter of discretion ought not to stay the action. Citations were made in support of the first submission from Benson's Abridgment, Comyn's Digest, Chitty on Contracts and Halsbury's Laws of England; the contrary view was stated in Russell on Arbitration. The question fell to be determined on two well-established principles: (1) that an infant was bound by a contract considered by the court to be for his benefit; (2) that if the contract was beneficial as a whole, the infant could not pick and choose between its terms (*Clements* v. *L.N.W. Ry. Co.* [1894] 2 Q.B. 482). In any particular case the court must ascertain whether the apprenticeship deed as a whole was for the benefit of the infant; certain observations in *Wood* v. *Fenwick* (1842), 10 M. & W. 195, indicated that an arbitration clause in such a deed might be beneficial. It was plain that the present deed as a whole was for the infant's benefit, as it provided for his instruction under conditions approved by organisations of high standing. Even if the arbitration clause by itself was not beneficial, the infant was bound by it, as the agreement as a whole was beneficial. It was not possible to treat the arbitration clause as an agreement separate from the deed itself, and an argument to that end based on cases such as *Heyman* v. *Darwins, Ltd.* [1942] A.C. 356 was unsound. Moreover, in the present case the infant had adopted the deed by suing on it, so he could not reject a clause which formed part of it. On the question of discretion, there was no doubt that the clause should be given effect. The dispute was one eminently fit to be adjudicated on by the named arbitrators, and there was no ouster of the jurisdiction. The action should therefore be stayed.

Appeal allowed.

APPEARANCES: *N. McKinnon* (*Agar-Hutton & Co.*); *J. G. K. Sheldon* (*Shaen, Roscoe & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 1202

ROAD TRAFFIC: PUBLIC SERVICE VEHICLE: "SPECIAL OCCASION"

Wurzal *v.* Dowker

Lord Goddard, C.J., Lynskey and Parker, JJ.

11th May, 1953

Case stated by Sheffield justices.

By the proviso to s. 61 (1) of the Road Traffic Act, 1930, a motor vehicle adapted to carry less than eight passengers shall not be deemed to be a stage carriage or an express carriage (so as to require to be licensed as a public service vehicle) by reason only that on occasions of "race meetings, public gatherings and other like special occasions" it is used to carry passengers at separate fares. By the proviso to s. 61 (2) of the Act, a vehicle used "on a special occasion for the conveyance of a private party" shall not be deemed to be a vehicle carrying passengers for hire or reward at separate fares (so as to require to be licensed as a public service vehicle) by reason only that the members of the party have made separate payments which cover their conveyance by that vehicle on that occasion. The defendant hired a motor-coach to a working man's club to take the members on seven successive Saturdays on fishing trips. He had no licence to use the vehicle as an express carriage. He was summoned under s. 72 of the Act for permitting the vehicle to be used as an express carriage without a road service licence applicable to public service vehicles. The justices dismissed the information. The prosecutor appealed.

PARKER, J. (with whom LYNSKEY, J., agreed) said that the question was whether each outing was "a special occasion." In *Miller* v. *Pill* [1933] 2 K.B. 308 the prosecution had argued that "special occasion" in s. 61 (2) meant an occasion special to the locality or public, not to the private party in question; and that the words must have the same meaning as in s. 61 (1), where they clearly had reference to a public occasion. The court (Avory, J., *dubitante*) upheld that submission, and held that the words ought to bear the same meaning in the two subsections. That case was binding on the courts. Although the conditions of s. 25 of the Road Traffic Act, 1934, had been complied with in the present case, those conditions were not definitive but additional conditions which required to be fulfilled to constitute a special occasion (*Victoria Motors (Scarborough), Ltd.* v. *Wurzal* [1951] 2 K.B. 520). Accordingly there must be a direction to convict.

LORD GODDARD, C.J., said that he agreed that the court was bound by *Miller* v. *Pill*, *supra*. That was not cited in the *Victoria Motors* case, *supra*, and would not have affected that decision. But in that case he had given certain illustrations of what might amount to a "special occasion" which could not be so regarded in view of *Miller* v. *Pill*, *supra*. Although that decision was binding, he shared the doubts of Avory, J. Although *prima facie* the same words used twice in a statute should receive the same construction, yet there might be different contexts, and the two subsections were dealing with dissimilar matters. It seemed common sense that a school treat or mothers' union outing should be a special occasion, but the result of *Miller* v. *Pill*, *supra*, was otherwise. Appeal allowed.

APPEARANCES: *J. P. Ashworth* (*Treasury Solicitor*); *J. P. Comyn* (*Hosking & Berkeley*, for *A. B. Thorneloe*, Sheffield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 1196**

PROBATE, DIVORCE AND ADMIRALTY DIVISION

DIVORCE: INSANITY: DISCHARGE AS TEMPORARY PATIENT A NULLITY

Wyatt *v.* Wyatt (by her guardian *ad litem*)

Karminski, J. 1st April, 1953

Petition for divorce.

The parties were married in 1932. On 27th December, 1946, the wife was admitted to a mental hospital as a private temporary patient on the application of the husband. She remained there as a temporary patient until June, 1947, when the period of temporary treatment was extended on the husband's application for a period not exceeding three months. A similar extension of three months was ordered from 27th September, 1947; but on 18th November, 1947, the wife was allowed to go home on trial as allowed for by the provisions of the Mental Treatment Rules, 1930, in the hope that the change might improve her condition. The following entry was made in her record: "She has gone home to-day and if she settles down satisfactorily she will be discharged." On 24th November, 1947, a letter purporting to be signed by the medical superintendent was written to the husband in the following terms: "As your wife has now been at home for nearly a week, we are to-day discharging her from our books"; and a note was made by the assistant in her record that she had been "discharged as relieved to-day." The Board of Control was informed by a notice of discharge dated 25th November, 1947, that the wife had been discharged on 24th November, 1947, on the authority of the husband. No such authority, or other authority, had in fact been given in accordance with the rules. The ground of discharge, namely, discharged "recovered," or "relieved," or "not improved," was inadvertently omitted from the form, which was returned by the Board of Control. The word "relieved" was then inserted by the medical superintendent, who signed a letter on 26th November, 1947, informing the board that "relieved" should have been included. The trial was unsuccessful and on 4th December, 1947, she was received as a private voluntary patient. She was still a voluntary patient at the hospital when the husband presented his petition for divorce under s. 1 (1) (*d*) of the Matrimonial Causes Act, 1950. Evidence was given and accepted that in the existing state of medical knowledge there was no prospect of recovery. It was not contended on her behalf that the extended order for temporary detention was not an order within the meaning of s. 1 (2) (*a*) of the Matrimonial Causes Act, 1950; but it was contended on behalf of the husband that the wife's admission as a voluntary patient followed immediately upon her treatment under a temporary order so as to come within the provisions of s. 1 (2) (*d*) of the Act.

KARMINSKI, J., said that it was provided by the Mental Treatment Act, 1930, that the person who applied for the temporary treatment of a patient could also apply for his or her discharge. Under r. 39 of the Rules of 1930, a private temporary patient could be discharged if the person on whose application the patient had been received so directed in writing. If there were no person qualified to direct the discharge or no person able and willing to act, the Board of Control might order the discharge. The only people who could get the discharge of a temporary patient were the applicant, in the present case the husband, or the Board of Control. The Board of Control had not applied, and the husband had never asked for, a discharge, although the notice of discharge given to the Board of Control stated that the discharge had been upon his authority. In the circumstances the purported discharge in November, 1947, was a nullity, and there would be a decree. Decree *nisi*.

APPEARANCES: *J. E. S. Simon*, Q.C., and *Victor Williams* (*Withers & Co.*); *Stuart Horner* (*Official Solicitor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 1158**

PROBATE: FALSE DESCRIPTION OF LEGATEE

In the Estate of Posner, deceased; Posner *v.* Miller

Karminski, J. 14th April, 1953

Issue (in probate action).

The deceased, who died in November, 1951, duly executed his last will in January, 1950, in which, subject to payment of debts, etc., he bequeathed his estate "unto my wife Rose Posner." Rose Posner died in March, 1952, and the plaintiff in this action, Leah Posner, was granted letters of administration with the will annexed of the estate of Rose Posner. She asked the court to pronounce for the will of January 1950, and for a grant of letters of administration of the deceased's estate with the will annexed. The defendant alleged that the trusts of the will had failed and that the plaintiff had no beneficial interest in the deceased's estate, the substance of the case being that Rose Posner was not the wife of the deceased but had gone through a form of marriage with him while her husband was alive, and that at the time of the execution of the will the deceased did not know that Rose Posner was not his wife. The plaintiff in reply denied that the marriage was invalid and alternatively denied that the trusts of the will had failed if Rose Posner were not the lawful wife. There was no allegation of fraud on the pleadings. An issue was ordered as to whether "assuming that Rose Posner was not the lawful wife of the deceased and that at the time of the execution of the will the deceased did not know that she was not his lawful wife, the words 'to my wife Rose Posner' in the will operate as words of gift to the Rose Posner with whom the deceased went through a ceremony of marriage in August, 1945."

KARMINSKI, J., said that the issue assumed two things: first, that Rose Posner was not the wife of the deceased, and secondly that the deceased did not know she was not his lawful wife.

Under those circumstances, did the will operate as a gift to her? The principle of law involved was a short one, but it was not, apparently, exactly covered by any authority. His lordship referred to *Kennell* v. *Abbott* (1799), 4 Ves. 802, 808; *Giles* v. *Giles* (1836), 1 Keen 685, 692, and said that in the latter case Lord Longdale, M.R., had demanded two things as being sufficient to defeat the gift. One was a legacy given to a person in a character which the legatee did not fill. But that by itself was not enough. In order to defeat the legacy there must also be a fraudulent assumption of that character; and, furthermore, the testator must have been deceived by that fraud. In the present case there was no allegation on the pleadings by way of defence of fraud against Rose Posner. His lordship referred also to *Wilkinson* v. *Joughin* (1866), L.R. 2 Eq. 319, and held that in the absence of an allegation of procuring by fraud, and on the basis assumed in the terms of the issue, the legacy to Rose Posner was not barred. Judgment for the plaintiff.

APPEARANCES: *C. Trevor Reeve* (*Warren & Warren*, for *Rudd, Moorfoot & Davenport*, Westcliff-on-Sea); *Harry Samuels* (*Maxwell & Lawson*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 114**

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 20th May:—

Belper Urban District Council
Bromley Corporation
Coastal Flooding (Emergency Provisions)
Pharmacy
Tees Conservancy Superannuation Scheme
Town and Country Planning
White Fish and Herring Industries

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Education (Miscellaneous Provisions) Bill [H.C.] [19th May.
Newport Corporation Bill [H.C.] [20th May.
Oxford Corporation Bill [H.C.] [20th May.
School Crossing Patrols Bill [H.L.] [19th May.

To provide for the authorisation of measures for the control of traffic, at places where children cross roads on their way to or from school, by persons other than police constables.

Read Second Time:—

Licensing Bill [H.L.] [19th May.
Saint Oswald Estate Bill [H.L.] [20th May.
Tees Valley Water Bill [H.C.] [19th May.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time:—

Land Drainage (Surrey County Council (Rive Ditch Improvement)) Provisional Order Bill [H.C.] [20th May.
Valuation for Rating Bill [H.C.] [21st May.

Read Third Time:—

Great Ouse River Board (Revival of Powers, &c.) Bill [H.L.] [20th May.

In Committee:—

Finance Bill [H.C.] [20th May.

B. QUESTIONS

INLAND REVENUE CLAIMS (MARGINAL AGE RELIEF).

Mr. R. A. BUTLER made the following statement on the practice of the Inland Revenue in dealing with claims to marginal age relief by persons whose incomes included building society interest:—"Marginal age relief may be claimed by a taxpayer aged 65 or more whose income slightly exceeds the limit, which until this year has been £500, at which the ordinary age relief deduction (now two-ninths) ceases to be due. It consists in restricting the taxpayer's bill to the sum of (*a*) what the tax would have been had the income been exactly equal to the limit plus (*b*) five-eighths of the income in excess of the limit.

In the past, in cases where a claimant to marginal age relief had building society interest against which personal allowances and reliefs cannot be given, and because such interest was included in the first £500 of income the full personal allowances and reliefs to which the taxpayer was entitled could not be given against that amount, it has been the practice of the Inland Revenue to grant a measure of additional relief. This took the form of a reduction in the amount of five-eighths of the excess of income over £500 included in the marginal relief computation.

This practice, for which there is no statutory basis, has been reviewed by the Inland Revenue, and it is felt that there is no justification for continuing it, having regard especially to recent increases in personal allowances and reliefs, and extensions of the "bands" of income chargeable at reduced rates. The concession will accordingly be withdrawn as from the current year 1953–54." [19th May.

COURTS-MARTIAL APPEAL COURT (WITNESSES' ALLOWANCES)

The ATTORNEY-GENERAL said the Lord Chancellor had noted the Seventh Report of the Select Committee on Statutory Instruments in which the special attention of the House was drawn to the unusual and unexpected use of the powers conferred by statute in respect of the Courts-Martial Appeal Court (Witnesses' Allowances, etc.) Regulations, 1953 (S.I. 1953 No. 574) and he had revoked reg. 2 thereof. [This relates to the remuneration and allowances of special commissioners and assessors.] [19th May.

VISITING FORCES ACT, 1952

Sir HUGH LUCAS-TOOTH said that no date had yet been fixed for bringing the provisions of the Visiting Forces Act, 1952, into force. [19th May.

CORONATION PROCESSIONS (FARM TRACTORS)

Mr. LENNOX-BOYD said he had suggested to local licensing authorities that no proceedings should be taken where agricultural tractors or farmers' goods vehicles which had been taxed at the preferential rates had become liable to a higher rate of duty by reason solely of their use for coronation processions and festivities which were publicly organised. The owner of any such vehicle used in this way must ensure, however, that it was covered by a valid insurance against third party risks while being so used. [20th May.

JURY SERVICE (WELSH LANGUAGE)

Mr. T. W. JONES asked whether the Attorney-General was aware that the provisions of the Welsh Courts Act, 1942, whereby jurymen were enabled to take the oath in their own language in their own country, were not being universally observed. Sir LIONEL HEALD said the Lord Chancellor was satisfied that the rules made by him under s. 2 of that Act made adequate provision for the administration of oaths in Welsh. His attention had been called to a case in which two persons called for jury service in Wales were required to stand down, but he understood that it was subsequently made clear that this was not due to their desire to be sworn in Welsh. [21st May.

STATUTORY INSTRUMENTS

Canned Corn Meat (Prices) (No. 2) Order, 1953. (S.I. 1953 No. 815.) 5d.
County of Inverness (Loch Iosal Vassary, Harris) Water Order, 1953. (S.I. 1953 No. 826 (S. 72).) 5d.
Courts-Martial Appeal Court (Witnesses' Allowances, etc.) (Amendment) Regulations, 1953. (S.I. 1953 No. 811.)
Draft **Double Taxation Relief** (Taxes on Income) (Belgium) Order, 1953. 8d.
Hill Cattle Subsidy Payment (Scotland) Order, 1953. (S.I. 1953 No. 821 (S. 71).)
London Traffic (Prescribed Routes) (No. 16) Regulations, 1953. (S.I. 1953 No. 812.)
London Traffic (Restriction of Waiting) (Grays) Regulations, 1953. (S.I. 1953 No. 813.)
Marriages Validity (Liverpool Old Synagogue) Order, 1953. (S.I. 1953 No. 809.)
National Health Service (Local Health Authorities) Estimation of Expenditure (Scotland) Amendment Regulations, 1953. (S.I. 1953 No. 802 (S. 70).)

Owner's Risk Standard Charges Modification Order, 1953. (S.I. 1953 No. 808.)
Tarbet-Inverary-Lochgilphead-Oban Trunk Road (Monadh Liath and Other Diversions) Order, 1953. (S.I. 1953 No. 814.)
Town and Country Planning (Minerals) Regulations, 1953. (S.I. 1953 No. 820.) 5d.
Town and Country Planning (Minerals) (Scotland) Regulations, 1953. (S.I. 1953 No. 827 (S. 73).) 5d.
Wey Valley Water Order, 1953. (S.I. 1953 No. 803.)
Wild Birds Protection (Westmorland) Order, 1953. (S.I. 1953 No. 819.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

The following have been elected Masters of the Bench of the Middle Temple: Mr. C. B. SALMON, Q.C., Mr. PASCOE HAYWARD, Q.C., Mr. G. R. HINCHCLIFFE, Q.C., Mr. BERTRAM BENAS and Mr. K. W. MACKINNON.

Mr. S. L. PETER, Town Clerk of Launceston for the past twenty-eight years, has relinquished the office on taking the mayoralty of Launceston.

Mr. A. R. COOLS-LARTIGUE, Puisne Judge, Windward and Leeward Islands, has been appointed Puisne Judge, Jamaica.

Personal Notes

Mr. T. P. Cliffe, solicitor, of Huddersfield, was married on 14th May to Miss Shirley Cartwright, who was mayoress of Huddersfield during her father's mayoralty in 1949–50.

Mr. A. J. H. Durham, an assistant solicitor to Warwickshire County Council, has resigned with effect from 2nd June with a view to taking up a post in industry.

Miscellaneous

The London Solicitors' Golfing Society defeated the Bar Golfing Society by six games to four in a jubilee match (both societies having been founded fifty years ago) at Woking, on 16th May. The results, with London solicitors' names first, were: MORNING.—P. Marriage and F. R. Furber beat M. Scholfield and V. Lemieux, 4 and 2; T. M. Mills and R. Bathurst Brown lost to C. Trevor Reeve and P. D. Cotes Preedy, 2 and 1; B. L. B. Hutchings and T. G. Bennett beat G. D. Roberts, Q.C., and P. Cadbury, 1 hole; K. Mountfort and T. M. Sowerby beat R. E. Seaton and J. L. Elson Rees, 2 and 1; G. Vaughan and C. Davenport beat E. Milner Holland, Q.C., and M. J. Albery, 2 and 1. AFTERNOON.—Marriage and Hutchings lost to Trevor Reeve and Lemieux, 3 and 2; Furber and Mountfort beat Scholfield and Roberts, 2 and 1; Bennett and Davenport lost to Cotes Preedy and Elson Rees, 3 and 2; Bathurst Brown and Vaughan beat Milner Holland and Seaton, 2 holes; Mills and Sowerby lost to Albery and Cadbury, 2 and 1.

SOCIETIES

THE LAW SOCIETY

The annual general meeting of the members of The Law Society will be held in the Hall of the Society on Friday, 3rd July, at 2 p.m.

The following are the names of the members of the Council retiring by rotation: Mr. Bevan-Thomas, Mr. Burrows, Mr. Cole, Mr. Driver, Sir Alan Gillett, Sir Edwin Herbert, Mr. Ogle, Mr. Payne, Mr. Renwick and Mr. Taylor.

So far as is known, with the exception of Sir Alan Gillett, they will be nominated for re-election.

There is one other vacancy, caused by the resignation of Sir Leslie Farrer.

THE INTERNATIONAL LAW ASSOCIATION

The Secretary-General of the United Nations, Mr. Dag Hammarskjold, and Pandit Jawaharlal Nehru have accepted the invitation of the International Law Association to become Honorary Vice-Presidents; and Mr. Philip Frere, M.C., has been appointed Honorary Treasurer.

The Indian Branch of the Association is holding a regional conference at New Delhi, from 28th December, 1953, to 2nd January, 1954, when the subjects to be discussed will be Air Law, Nationality, State Succession, United Nations Charter Revision, International Companies, Fundamental Human Rights, and Comparative Federal Constitutions.

At the next full conference (the forty-sixth) of the Association, to be held in the United Kingdom in August, 1954, the topics for discussion will be Inland Water Rights and Obligations between States, International Law and International Trade, Rights to the Sea-bed and its Subsoil, Air Law, International Company Law, International Monetary Law, Insolvency and the Review of the United Nations Charter. On the last subject an international committee is being formed with Judge N. V. Boeg of Denmark (ex-President of the Association) as chairman, and Dr. George Schwarzenberger, of London University, as rapporteur. The Hon. Secretary-General of the Association is Mr. W. Harvey Moore, Q.C., 3 Paper Buildings, Temple, London, E.C.4.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme for June, 1953: 1st June—Coronation party of S.A.C.S. Intention to congregate in Mall. Meet 7 p.m. Green Park Underground Station, just inside park, on Monday 1st. Details, G. Pearce. POPesgrove 2148 (evenings only); 11th June.—Swimming and boating party Serpentine. Meet 5.45 p.m., Marble Arch Underground Station. Enquiries Mrs. Heggs. BAYswater 2400; 25th June.—Theatre party. Details Miss P. Baigent. POLlard 7542 (evenings only).

PRINCIPAL ARTICLES APPEARING IN VOL. 97

4th April to 30th May, 1953

For list of articles published up to and including 28th March, see *ante*, p. 234.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).